



Crl.R.C.No.32 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.32 of 2020
and Cr.M.P.No.154 of 2020

Chitra

... Petitioner

Vs.

1.Robinson Moses
2.Sarprasadam
3.Glory
4.Alexander

... Respondents

Prayer: Criminal Revision Petition filed under Section 397 read with 401 of Criminal Procedure Code to set aside the order made in Crl.A.No.14 of 2015 dated 19.10.2019 on the file of Vth Additional Sessions Judge, Chennai filed by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

For Petitioner : Mr.P.Anand Kumar

For Respondents : Mr.Sam JR. S. Shah for R1
for M/s.Shah and shah

: Notice returned unserved for RR2 to 4



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ORDER

This Revision case has been filed by the petitioner as against the order in Crl.A.No.14 of 2015 dated 19.10.2019 on the file of Vth Additional Sessions Judge, Chennai filed by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005.

2.The petitioner is the wife, 1st respondent is the husband, 2nd respondent is the mother of the 1st respondent, 3rd respondent is the sister and the 4th respondent is the brother.

3.The petitioner filed a complaint before the Protection Officer under Domestic Violence Act and the same was dealt with by the XXIIIrd Metropolitan Magistrate in M.C.No.43 of 2013. The learned Magistrate after the enquiry passed an order of maintenance directing the 1st respondent to pay a sum of Rs.20,000/- as monthly maintenance to the petitioner and also passed an order of injunction not to alienate or encumber the property and directed to produce the family card and related documents. Aggrieved over the same, the 1st respondent husband preferred an appeal before the Sessions Judge, Chennai in Crl.A.No.14 of 2015 and the same was dealt



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with by the Vth Additional Sessions Judge, chennai.

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4.After hearing of the appeal, the Appellate Court allowed the appeal and set aside the order of the learned Metropolitan Magistrate in M.C.No.43 of 2013 dated 02.12.2013. Having challenged the said order of the Appellate Court, the wife has filed the present Revision case before this Court.

5.Learned counsel appearing for the Revision Petitioner would submit that after giving birth to the child, the 1st respondent deserted the petitioner and the child for more than ten months without even contacting her or visiting the child and the petitioner. Therefore, the petitioner filed a Maintenance case in M.C.No.43 of 2013 on the file of the XXIIIrd Metropolitan Magistrate, Saidapet seeking relief of order under Sections 18, 19, 20 & 22 of the Protection of Women from Domestic Violence Act, 2005.

6.The learned Magistrate while passing order has observed that though there was no sufficient evidence let in by the petitioner to



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substantiate the complaint, it is the duty of the respondent to maintain the petitioner and her child and accordingly, directed the 1st respondent herein to pay the petitioner and child a sum of Rs.20,000/- per month as maintenance and medical expenses from the date of filing of the petition and further directed the 1st respondent not to sell, mortgage, alienate or encumber the flat purchased in the joint name of the petitioner and the 1st respondent without the knowledge of the petitioner. The Appellate Court set aside the said order on the ground that the domestic violence was not proved. Therefore, the order of the trial Court was erroneous and the appeal was allowed.

7.Learned counsel for the petitioner placed reliance on the judgment of the Kerala High Court in *Jayasankar S.S. Vs. State of Kerala in Crl.Rev.P.No.1305 of 2017* to substantiate his case.

8.Learned counsel for the respondent would submit that though the learned Magistrate found that the petitioner has not proved regarding the domestic violence, if that be the case, ought to have been dismissed the petition, if at all any maintenance, as if she is entitled and the petitioner



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would have approached the competent Court to get a maintenance not under the Domestic Violence Act. The Appellate Court rightly appreciated that there is no domestic violence and therefore the relief granted by the learned Magistrate was set aside and there is no merit in the Revision and the Revision is liable to be dismissed.

9.Heard the arguments advanced by the learned counsel appearing on either side and perused the materials available on record before this Court.

10.Admittedly, the petitioner and the 1st respondent are husband and wife and both are living separately. Though the petitioner filed a complaint under Section 12 of the Domestic Violence Act, before the learned Metropolitan Magistrate, Chennai and the learned Magistrate also found that the petitioner has not sufficiently proved regarding the domestic violence, however, ordered for maintenance.

11.A perusal of the records as observed by both the trial Court and the Appellate Court, the petitioner has not made out any Domestic violence against the petitioner said to have made by the respondents. Once, the



petitioner has not proved that there is domestic violence, she is not entitled to get any relief sought for as in the petition. However, if the petitioner is unable to maintain herself, she can always get maintenance from the 1st respondent in the manner known to law and not under the Domestic Violence Act. The case, under the Domestic Violence Act, it is the prima facie that the petitioner has to establish the Domestic violence unless it is established, she is not entitled to any relief as sought for. Therefore, the petitioner has not proved that the respondents have committed Domestic violence under the Domestic Violence Act. However, the relationship of the parties are admitted. If at all the petitioner is unable to maintain herself and the 1st respondent having despite sufficient means, he neglect/ refuse to maintain the petitioner who is unable to maintain herself, she can always workout her remedy in the manner known to law. The citation referred by the learned counsel for the petitioner, the facts and circumstances of the case is not applicable to the facts in the present case on hand. Therefore under these circumstances, there is no merits in the Revision and the Revision is liable to be dismissed.

12. Accordingly, this Revision is dismissed. Consequently, connected



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miscellaneous petition is closed.

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Index: Yes/ No

Speaking Order : Yes/ No

gba

To

1.The XXIII rd Metropolitan Magistrate Court,
Saidapet, Chennai



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P.VELMURUGAN,J.

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